

State of Maine

Division of Purchases

Guidelines for Sole Source Justification

State Agencies must submit accurate and complete data to support their request for sole source contracting (i.e. using a non-competitive procurement process). The justification must clearly explain why only the identified company can meet the Department's requirements. The Division of Purchases has developed a Sole Source Authorization Form (BP37SS) which must be completed and attached to every requested sole source. The BP37SS form must be completed in its entirety. Although every section of the form must be completed, the core of a sole source justification is usually based upon one of the following sections of the form:

1. **Uniqueness:** The supplies or services required are unique to a specific contractor.
 - a. It is insufficient to simply say that the contractor is unique. Details must be provided.
 - b. If the item is unique to the contractor, the nature of the unique characteristics and the necessity of those particular characteristics must be described.
 - c. If the contractor has unique expertise, that expertise and its necessity must be described.
 - d. If the contractor has unique equipment or facilities, or unique or proprietary data, the nature and necessity of those particular unique assets must be explained.
 2. **Timeframe:** Time is of the essence and only one known source can meet the Department's needs within the required timeframe. The timeframe must be explained:
 - a. Provide the date by which the supplies or services must be delivered.
 - b. Indicate how that date was determined and its significance.
 - c. Indicate the impact of delay in terms of program schedules, milestones, etc.
 - d. State how long it would take another contractor to acquire the capability to perform (learning period), how much it would cost another contractor to get up to speed, and if appropriate, what it would cost the Department in terms of dollars and man-hours to get another contractor up to speed. State the bases for the above estimates.
 3. **Cost:** One primary justification for a sole source contract could be that the total cost of the acquisition is less than \$10,000. It must be noted that the cost has been determined to be "fair and reasonable", and with an explanation about how that determination was made (e.g. comparisons with previous contracts, similar services, etc.).
- ⇒ Statements that a contractor has the best capability, offers the lowest price, or is the only qualified source are not basis for sole source. Such determinations can only be made through competitive acquisitions. A strong presentation which merely establishes that the recommended source is most highly qualified to perform but does not establish why other sources cannot perform is unacceptable.
- ⇒ Incumbency does not justify sole source and, rather, may in fact be cause to require a competitive award.
- ⇒ Lack of adequate advance planning by the Department or Agency requesting sole source acquisition does not justify sole source acquisition.

THE PURPOSE of the Sole Source Authorization Form is to obtain complete and accurate support for the specific contract under consideration. Agencies should not spend time developing perfunctory generic statements that do not address the specific contract(s) in question. The Division of Purchases will return boilerplate requests and the accompanying contract(s) to the issuing agency without consideration.